

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

BSQUARE CORPORATION

Plaintiff,

v.

DATA EVOLUTION CORPORATION

Defendant.

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C.A. No. \_\_\_\_\_

**COMPLAINT**

Comes now Plaintiff Bsquare Corporation and files its Complaint against Defendant Data Evolution Corporation and shows the Court as follows:

**I.  
Parties**

1. Plaintiff Bsquare Corporation ("Bsquare") is a Washington corporation with its principal place of business in Bellevue, Washington.
2. Defendant Data Evolution Corporation ("Data Evolution") is a Delaware corporation with its principal place of business in New Orleans, Louisiana.

**II.  
Venue and Jurisdiction**

3. Venue and jurisdiction are proper in this Court because the paragraph 15 of the Master Professional Engineering Services Agreement ("the Agreement") at issue in this case, a copy of which is attached as Exhibit A to this Complaint, provides that all claims arising or related to the Agreement shall be brought exclusively in the state and federal courts of the State

of Delaware. In the Agreement, Data Evolution consented to personal jurisdiction and venue in the state and federal courts of the State of Delaware. The amount in controversy exclusive of costs exceeds \$100,000 and jurisdiction is founded upon diversity of citizenship pursuant to 28 U.S.C. § 1332.

**III.**  
**Factual Background**

4. This is a suit on a contract. Data Evolution hired Bsquare to manage a project to develop a new version of the Clio tablet computer owned and sold by Data Evolution.

5. Because of significant uncertainties in Data Evolution's technical requirements and the amount of work required to identify and meet those requirements, the parties agreed that the contract would be on a time-and-materials basis rather than a fixed-fee basis. That is, instead of there being a fixed contract price, Data Evolution promised to pay Bsquare \$120 per hour for each person-hour expended on the project and to reimburse Bsquare for its expenses, subcontractor services, components and supplies (plus a 5% markup).

6. The parties' original estimate of the cost to perform the project was \$330,480. During the course of the performance of the project, the estimated cost and schedule for the project increased as a result of the identification of additional technical requirements and issues not known at the outset of the project, specification changes, delays in partners' contractual agreements', significant changes to the original project assumptions and the eight separate changes in scope that were agreed to. The total estimated cost of performing the project increased to \$523,920 as of the last change of scope entered into on May 17, 2005.

7. From the beginning, Data Evolution was delinquent on its payments to Bsquare. The last payment made by Data Evolution was on April 29, 2005 for work performed and expenses incurred in February 2005. On June 9, 2005, Bsquare notified Data Evolution that because of its failure to make payments, Bsquare was stopping work on the project. Data Evolution failed to cure its payment default within the 30-day cure period stated in the Agreement.

8. Data Evolution has failed to pay to Bsquare the principal amount of \$474,194 for work performed and expenses incurred. Bsquare has made repeated demands to receive payment. Data Evolution has not paid the amounts owed.

9. As required under the Agreement, the parties engaged in a formal mediation on this matter on October 8, 2005 in Wilmington, Delaware, but were unable to reach a settlement.

**IV.**  
**Cause of Action--Breach of Contract**

10. Data Evolution has breached its contract with Bsquare by failing to make payments to Bsquare. As a result of these breaches, Bsquare has suffered actual damages of \$474,194. In addition to actual damages, Bsquare is entitled to interest under the Agreement, and according to the terms of the Agreement, reasonable attorney fees and all other costs and expenses that Bsquare incurs in the enforcement of the Agreement

V.

**Cause of Action – Misappropriation of Intellectual Property**

11. Under the terms of the Agreement, the intellectual property developed by or on behalf of Bsquare during the course of performing the Agreement belongs to Bsquare until full payment of the fees and expenses is made by Data Evolution.

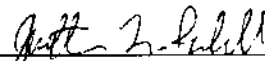
12. Bsquare has learned that Data Evolution has obtained tooling molds from a molding supplier who was involved in the project, and Bsquare believes that Data Evolution does not have full rights to these tooling molds. The molds were developed and/or modified using mechanical design documents that were created for Bsquare by a Bsquare subcontractor during the project. Bsquare holds exclusive ownership rights to the mechanical design documents and molds since Data Evolution has not paid Bsquare for the services involved to create the mechanical design documents and molds. Therefore, to the extent that the tooling molds obtained by Data Evolution were developed and/or modified using these mechanical design documents, Data Evolution has no rights to such.

VI.

**Prayer**

Plaintiff respectfully requests that this Court order Data Evolution to appear and answer in this case, and award Bsquare its actual damages, interest, attorney fees, costs, expenses, to preliminarily and permanently enjoin Data Evolution from using the intellectual property of Bsquare and grant Bsquare all other relief to which it is entitled.

Respectfully submitted,

  
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